

JUN 14 1991

OFFICE OF THE CLERK

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1990

COUNTY OF YAKIMA and DALE A. GRAY,  
Yakima County Treasurer,  
v. *Petitioners,*

CONFEDERATED TRIBES AND BANDS OF THE  
YAKIMA INDIAN NATION,  
*Respondent.*

CONFEDERATED TRIBES AND BANDS OF THE  
YAKIMA INDIAN NATION,  
v. *Petitioner,*

COUNTY OF YAKIMA and DALE A. GRAY,  
Yakima County Treasurer,  
*Respondents.*

On Writ of Certiorari to the  
United States Court of Appeals  
for the Ninth Circuit

**JOINT APPENDIX**

JEFFREY C. SULLIVAN  
Prosecuting Attorney  
Yakima County, Washington  
JOHN V. STAFFAN \*  
Deputy Prosecuting Attorney  
Room 329, Courthouse  
Yakima, Washington 98901  
(509) 575-4141  
*Counsel for Petitioners*  
*Yakima County, et al.*

R. WAYNE BJUR  
TIM WEAVER  
COCKRILL, WEAVER & BJUR, P.S.  
316 North Third Street  
P.O. Box 487  
Yakima, Washington 98907  
(509) 575-1500  
*Counsel for Respondent/Cross-  
Petitioner*

\* Counsel of Record

# TABLE OF CONTENTS

	Page
Chronology of Relevant Docket Entries .....	1
Complaint (filed November 9, 1987) .....	2
Affidavit of Harvey Adams (filed November 12, 1987) ..	8
Affidavit of Vera Hernandez (filed November 12, 1987) .....	11
Agreed Order Temporarily Restraining Foreclosure Sale (filed November 20, 1987) .....	14
Motion for Summary Judgment (filed March 14, 1988) ..	17
Affidavit of Ray Olney (filed March 14, 1988) .....	18
Affidavit of R. Wayne Bjur (filed April 4, 1988) .....	22
Cross-Motion for Partial Summary Judgment (filed April 4, 1988) .....	25
Affidavit of Nancy Davidson (April 4, 1988) .....	27
Affidavit of Ralph Huck (filed April 4, 1988) .....	29
Answer (filed April 6, 1988) .....	31
Stipulation of Facts (filed April 26, 1988) .....	36
Order Granting Certiorari and for Consolidation (entered April 29, 1991) .....	45

## CHRONOLOGY OF RELEVANT DOCKET ENTRIES

Filing date	Description of Entry
DISTRICT COURT	
November 9, 1987	Complaint
November 20, 1987	Agreed Order Temporarily Restraining Foreclosure Sale
March 14, 1988	Motion for Summary Judgment
April 4, 1988	Cross-Motion for Partial Summary Judgment
April 6, 1988	Answer
May 10, 1988	Order and Judgment (Cert. Pet. pp. 32a-39a)
COURT OF APPEALS	
January 9, 1990	Opinion and Judgment (not reproduced —see superseding Amended Opinion at Cert. Pet. pp. 1a-31a)
January 25, 1990	Appellee's Petition for Rehearing (not reproduced)
February 21, 1990	Appellant's Petition for Rehearing (not reproduced)
February 22, 1990	Motion of U.S. to Intervene (not reproduced)
May 16, 1990	Amended Opinion & Judgment (Cert. Pet. pp. 1a-31a)
June 7, 1990	Order Denying Rehearing (not reproduced)

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

No. C-87-654-AAM

CONFEDERATED TRIBES AND BANDS OF THE  
YAKIMA NATION,

*Plaintiff,*

vs.

COUNTY OF YAKIMA and DALE A. GRAY,  
Yakima County Treasurer,  
*Defendants.*

COMPLAINT FOR DECLARATORY JUDGMENT  
AND FOR INJUNCTIVE RELIEF

[Filed Nov. 9, 1987]

COMES NOW the plaintiff and for cause of action  
against the defendants, alleges as follows:

PARTIES

I.

Plaintiff is a federally recognized Indian Nation pursuant to the *Treaty with the Yakimas*, 12 Stat. 951. Plaintiff brings this action on its behalf as a sovereign, tribal entity and on behalf of its members who reside within the exterior boundaries of the Yakima Indian Reservation. Plaintiff also brings this action in the place of the United States of America who through the Department of Interior/Bureau of Indian Affairs, regulates and protects the interests of plaintiff and its enrolled members.

II.

Defendant, County of Yakima, is a municipal corporation of the state of Washington. A substantial portion of plaintiff's reservation is located within Yakima County.

III.

Defendant Dale A. Gray is the duly elected treasurer of Yakima County, Washington, responsible for the collection of ad valorem property taxes within Yakima County, Washington.

JURISDICTION

IV.

This Court has jurisdiction over this matter and venue is proper pursuant to 26 U.S.C. Sec. 1331 as this action involves a federal question concerning a treaty made by the United States of America, and pursuant to 28 U.S.C. Sec. 1362 as this matter involves an action by a federally recognized Indian nation.

FIRST CAUSE OF ACTION

V.

Plaintiff is a federally recognized Indian Nation with which the United States of America entered into a treaty entitled *Treaty with the Yakimas*, 12 Stat. 951. In said *Treaty with the Yakimas*, the Yakima Nation reserved from other lands ceded to the United States, lands designated as the Yakima Indian Reservation which is for the exclusive use and benefit of the Yakima Nation and its members. The Yakima Nation also retained its sovereign right to be self-governing and to make and enforce its own laws. Subsequent to said *Treaty with the Yakimas*, the Yakima Nation has maintained its tribal sovereignty and existence and continues to be self-governing, providing essential governmental services to its members and



non-members within the exterior boundaries of the Yakima Indian Reservation.

#### VI.

In connection with its reserved powers of self-government, the Yakima Nation owns and operates a considerable amount of land within the exterior boundaries of the Yakima Indian Reservation. Title to such land is held both in a restricted trust status for the benefit of the Yakima Nation, and in unrestricted fee patent status.

#### VII.

Defendant Yakima County, by and through defendant treasurer, imposes ad valorem real estate taxes under the authority of RCW 84.52.010 et seq. Said defendants have been collecting such ad valorem taxes under the provisions of RCW 84.56.010 et seq., RCW 84.60.010 et seq., RCW 84.64.010 et seq., and RCW 84.68.010 et seq.

#### VIII.

In addition to imposing ad valorem taxes on fee patent land owned by the Yakima Nation, defendants are also imposing ad valorem taxes upon fee patent land located within the Yakima Indian Reservation which is owned by enrolled members of the Yakima Nation who have not severed tribal relations.

#### IX.

The imposition of ad valorem property taxes upon fee patent land owned by the Yakima Nation and/or its members violates the provisions of Article 26 of the Constitution of the State of Washington. Article 26 of the State Constitution does not permit the State or defendant County to impose ad valorem taxes upon real estate owned by the Yakima Nation and/or its members on property owned within the Yakima Indian Reservation unless said property is owned by members of the Yakima Nation who

have severed tribal relations. The imposition of ad valorem taxes by defendants on fee patent land owned by the Yakima Nation and its members within the Yakima Indian Reservation is therefore, unlawful and illegal.

#### X.

The imposition of an ad valorem tax against the fee patent land of the Yakima Nation and its members intrudes upon and interferes with the ability of the Yakima Nation to make its own laws and govern itself and its members. The United States Congress has not authorized nor consented to the imposition of an ad valorem tax on the land of the Yakima Indian Reservation owned by the Yakima Nation and/or its members. Therefore, the existing and continuing efforts by the defendants to impose and collect ad valorem taxes from the Yakima Nation and its members with regard to fee patent land within the boundaries of the Yakima Indian Reservation is unlawful and illegal.

#### XI.

The defendants have scheduled a public tax sale of approximately 40 parcels of real estate located within the Yakima Indian Reservation in which the Yakima Nation and/or its members have a fee patent interest. Said sale is scheduled for November 20, 1987. Unless said sale is enjoined and restrained by the Court, the plaintiff and its members will suffer irreparable harm.

#### XII.

Plaintiff is entitled to a judgment declaring that fee patent land located within the Yakima Indian Reservation which is owned by the Yakima Nation and/or its enrolled members who have not served their tribal relations within the boundaries of the Yakima Indian Reservation are not subject to State or County ad valorem taxes.

## SECOND CAUSE OF ACTION

## XIII.

Plaintiff realleges Paragraphs No. I through IV and Paragraphs No. V through VI as though set forth herein in full.

## XIV.

The Yakima Nation and its enrolled members occasionally sell fee patent land located within the exterior boundaries of the Yakima Indian Reservation. Defendants impose a real estate excise tax pursuant to the provisions of RCW 82.45.010 et seq. upon the Yakima Nation and its members in order to consummate such sales.

## XI. [sic]

The actions of the defendants regarding the imposition of an excise tax on real estate sales under the provisions of RCW 82.45.010 et seq. upon the Yakima Nation and its enrolled members are invalid and illegal as such actions infringe upon the sovereignty of the Yakima Nation and its treaty reserved right to make its own laws and govern its own people. Defendants have no lawful authority to impose or collect said excise taxes. Plaintiff is entitled to a judgment declaring that the sales of fee patent land located within the exterior boundaries of the Yakima Indian Reservation by the Yakima Nation and its members are not subject to the excise tax otherwise imposed by RCW 82.45.010 et seq.

WHEREFORE, plaintiff prays for judgment against the defendants as follows:

1. For a temporary restraining order and an injunction against the defendants prohibiting the sale of approximately 40 parcels of real estate in which enrolled members of the Yakima Nation who have not severed their tribal relations have an interest in. [sic]

2. For an injunction against the defendants prohibiting said defendants from the levy, imposition or collection of ad valorem taxes upon the fee patent land of the Yakima Nation and its tribal members who have not severed tribal relations within the exterior boundaries of the Yakima Indian Reservation.

3. For an injunction against the defendants prohibiting said defendants from the levy, imposition or collection of the excise tax imposed by RCW 82.45.010 et seq., for sales of real estate located within the exterior boundaries of the Yakima Indian Reservation.

4. For such other and further relief as to the Court seems just and proper.

5. For plaintiff's costs and disbursements incurred herein.

DATED this 6th day of November, 1987.

/s/ Tim Weaver  
TIM WEAVER  
Attorney for Plaintiff

/s/ Wayne Bjur  
R. WAYNE BJUR  
Attorney for Plaintiff

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

No. C-87-654-AAM

CONFEDERATED TRIBES AND BANDS OF THE  
YAKIMA NATION,

*Plaintiff,*

vs.

COUNTY OF YAKIMA and DALE A. GRAY,  
Yakima County Treasurer,  
*Defendants.*

AFFIDAVIT OF HARVEY ADAMS

[Filed Nov. 12, 1987]

STATE OF WASHINGTON )  
 ) ss  
COUNTY OF YAKIMA )

HARVEY ADAMS being first duly sworn on oath,  
deposes and says:

1. That you [sic] affiant has personal knowledge of the facts stated in this affidavit and is competent to testify as to the same. That your affiant makes this affidavit in support of the request that the public tax sales scheduled for November 20, 1987, of land located within the Yakima Indian Reservation in which tribal members have an interest, should be restrained until the conclusion of the above-captioned proceedings.

2. That your affiant is a duly elected member of the Yakima Nation Tribal Council. That your affiant serves as chairman of the Land Committee of the Tribal Coun-

cil and is charged with the responsibility of overseeing land issues and concerns of the Yakima Nation and its members. That in this regard, your affiant has investigated the public tax sales of real property which Yakima County intends to conduct on November 20, 1987. Your affiant has determined that several members of the Yakima Nation have land scheduled for tax sale. That your affiant believes that Yakima County has no lawful authority to impose ad valorem property taxes against the reservation lands of Yakima tribal members and is requesting the Court to restrain such sales.

3. In the course of your affiant's duties and investigation of this problem, your affiant certifies to the Court that the following enrolled individuals have an interest in fee patent land located within the exterior boundaries of the Yakima Indian Reservation. The names and tax parcel numbers of the reservation properties involved are as follows:

NAME	PARCEL NO.	LOCATION
John (Puyette), Patricia	171005-23435	Harrah, WA
Teo, Harris J., Jr.	171005-32458	Harrah, WA
Brown, George J.	171005-32476	Harrah, WA
Brown, Betty Whitefoot		
Brown, George J.	171005-32477	Harrah, WA
Brown, Betty Whitefoot		
Ike, Duane	171005-32487	Harrah, WA
Phillips, Otis M.	171017-33404	Harrah, WA
Shawaway, Lila F.		
Walker, Linda M.	171130-33004	Harrah, WA
Walker, Linda M.	171130-33006	Harrah, WA
Howard, Larry A.	181126-33014	Harrah, WA
Howard, Augustine Phillips		
Villarreal, Betty J.	181134-11419	Harrah, WA
Jack, Norma M.	191111-33522	Wapato, WA
Jackson, Nellie Stahi	191115-13527	Wapato, WA
George, Melissa	191124-22003	Progressive Rd., Wapato, WA



NAME	PARCEL NO.	LOCATION
Olney, Helen M.	191125-31409	Wapato, WA
Harrison, Floyd Bill	201003-31515	Toppenish, WA
Young, Raymond B.	201003-32417	Toppenish, WA
Elwell, Galen L.	201003-42488	Toppenish, WA
Elwell, Bertha M.		
George, Ross L.	201003-42498	Toppenish, WA
George, Georgette F.		
Elwell, George Jr.	201004-13430	Toppenish, WA
Pinkham, Jonathan B.	201004-24447	Toppenish, WA
Pinkham, Yvonne L.		
Hansen, Martha Clark	201004-41406	Toppenish, WA
Totus, Iola (Smartlowit)	201004-44482	Toppenish, WA
Smiscon, Harry J.	201010-23507	Toppenish, WA
Tulee, Clifford B.	201014-23008	Yost Road, Toppenish, WA
Wahsise, Flora Nye	201132-33026	McDonald Road, Toppenish, WA
Smith, Sharon (Totus)	201003-31510	Toppenish, WA

All of the above-described parcels are located within the exterior boundaries of the Yakima Indian Reservation.

DATED this 12 day of November, 1987.

/s/ Harvey E. Adams  
HARVEY ADAMS

SIGNED AND SWORN to before me this 12th day of November, 1987.

/s/ Robert Wayne Bjur  
Notary Public in and for the  
state of Washington, residing  
at Yakima.

My commission expires:  
8-15-90

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

No. C-87-654-AAM

CONFEDERATED TRIBES AND BANDS  
OF THE YAKIMA NATION,  
*Plaintiff,*

vs.

COUNTY OF YAKIMA and DALE A. GRAY,  
Yakima County Treasurer,  
*Defendants.*

AFFIDAVIT OF VERA HERNANDEZ

[Filed Nov. 12, 1987]

STATE OF WASHINGTON )  
 ) ss  
COUNTY OF YAKIMA )

VERA HERNANDEZ being first duly sworn on oath,  
deposes and says:

1. That your affiant has personal knowledge of the facts stated in this affidavit and is competent to testify as to the same. That your affiant is presently employed by the Yakima Nation, in Toppenish, Washington. That your affiant is employed as the enrollment clerk and is charged with the duties of maintaining the roll of enrolled members of Yakima Indian Nation. That your affiant makes this affidavit to certify to the Court that the following persons are enrolled members of the Yakima Indian Nation.



2. Your affiant has reviewed the tribal rolls which are maintained in the ordinary course of business at the Bureau of Indian Affairs, at the headquarters of the government of the Yakima Indian Nation located near Toppenish, Washington. Your affiant is also personally acquainted with the persons described hereinbelow who are known to be enrolled members of the Yakima Indian Nation. Your affiant certifies that the following persons are, in fact, enrolled members of the Yakima Nation who have been enrolled pursuant to federal and tribal law and who have not severed relations with the Yakima Nation.

NAME	ENROLLMENT NUMBER
John (Puyette), Patricia	4330
Teo, Harris J. Jr.	4972
Brown, George J.	368
Brown, Betty Whitefoot	3157
Ike, Duane	3485
Phillips, Otis M.	2054
Shawaway, Lila F.	5530
Walker, Linda M. (Davis)	4766
Howard, Larry A.	2648
Howard, Augustine Phillips	2048
Villarreal, Betty J.	3149
Jack, Norma M.	3555
Jackson, Nellie Stahi	2675
George, Melissa	5039
Olney, Helen M.	4190
Fiander, Charlene R.	3716
Harrison, Floyd Bill	3820
Young, Raymond B.	3663
Elwell, Galen L.	4840
Elwell, Bertha M.	5845
George, Ross L.	3733
George, Georgette F.	1578
Elwell, George Jr.	6749
Pinkham, Jonathan B.	3777
Pinkham, Yvonne L.	4008
Hansen, Martha Clark	496

NAME	ENROLLMENT NUMBER
Totus, Iola S.	2488
Smiscon, Harry J.	3970
Tulee, Clifford B.	2849
Wahsise, Flora Nye	2975
Smith, Sharon (Totus)	4386

DATED this 12th day of November, 1987.

/s/ Vera Hernandez

SIGNED AND SWORN to before me this 12th day of November, 1987.

/s/ Robert Wayne Bjur  
 Notary Public in and for the  
 state of Washington, residing  
 at Yakima.  
 My commission expires: 8-15-90

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF WASHINGTON

No. C-87-654-AAM

CONFEDERATED TRIBES AND BANDS  
OF THE YAKIMA NATION,  
*Plaintiff,*  
vs.

COUNTY OF YAKIMA and DALE A. GRAY,  
Yakima County Treasurer,

**AGREED ORDER TEMPORARILY RESTRAINING  
FORECLOSURE SALE OF CERTAIN  
INDIAN PROPERTIES**

[Filed Nov. 20, 1987]

This action having been brought by the Confederated Tribes and Bands of the Yakima Indian Nation on behalf of their members and in particular of certain members who own interests in fee lands within the Yakima Indian Reservation, such lands and their Yakima Indian owners being identified in the affidavit of Harvey Adams on file in this court and cause; and on the Supplemental Affidavit of Harvey Adams to be filed with respect to parcels 191122-11438 and 201003-42497 and appearing that the said properties are now scheduled to be sold pursuant to the Judgment of the Superior Court of the State of Washington in and for Yakima County to foreclose state ad valorem tax liens on Friday, November 20, 1987; and

The Plaintiffs' having brought this matter before this court on Motion for Temporary Restraining Order or Preliminary Injunction to prevent the Defendants herein

from a conducting foreclosure sale of said properties, as currently scheduled, on November 20, 1987; and

It appearing that there is no general right of redemption following state ad valorem tax foreclosure sale in the state of Washington, according to RCW 84.64, and that therefore the potential harm to the Indian owners identified herein from sale of their properties is much greater than the potential harm to the defendants, Yakima County and the Yakima County Treasurer, from delay of the scheduled sale of these properties; and,

The parties agreeing to the entry of this order, Defendants doing so without waiving arguments as to standing and jurisdiction, and the Court finding good cause for the entry hereof; now, therefore,

IT IS HEREBY ORDERED that, until this Court's determination of the merits herein or until further order of this Court, the Defendants herein, Yakima County and Yakima County Treasurer, are temporarily restrained from selling the above-mentioned, Yakima Indian-owned real properties, specifically, those properties identified in Yakima County Treasurer's records by the following numbers:

171005-23435	191125-31409	191122-11438
171005-32458	201003-31515	
171005-32476	201003-32417	
171005-32477	201003-42488	
171005-32487	201003-42498 & 42497	
171017-33404	201004-13430	
171130-33004	201004-24447	
171130-33006	201004-41406	
181126-33014	201004-44482	
181134-11419	201010-23507	
191111-33522	201014-23008	
191115-13527	201132-33026	
191124-22003	201003-31510	

DATED this 12th day of November, 1987.

/s/ Alan A. McDonald  
ALAN A. McDONALD, Judge  
United States District Court

Presented by:  
/s/ John V. Staffan  
JOHN V. STAFFAN  
Deputy Prosecuting Attorney  
Attorney for Defendants

TIM WEAVER/R. WAYNE BJUR  
Cockrill, Weaver & Bjur, P.S.  
Attorney for Plaintiffs

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

\_\_\_\_\_  
No. C-87-854AAM

CONFEDERATED TRIBES AND BANDS  
OF THE YAKIMA NATION,  
*Plaintiff,*  
vs.

COUNTY OF YAKIMA and DALE A. GRAY,  
Yakima County Treasurer,  
*Defendants.*

\_\_\_\_\_  
MOTION FOR SUMMARY JUDGMENT

COMES NOW the plaintiff and moves the Court for an order granting a summary judgment in the above-captioned matter. This motion is based on the affidavit of Harvey Adams, affidavit of Ray Olney, Jr., memorandum in support thereof, and upon the records and files herein. This motion is made pursuant to FrCP 56.

DATED this 7th day of March, 1988.

/s/ R. Wayne Bjur  
R. WAYNE BJUR of  
Cockrill, Weaver & Bjur, P.S.  
Attorney for Plaintiff



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

\_\_\_\_\_  
No. C-87-854AAM

CONFEDERATED BANDS AND TRIBES  
OF THE YAKIMA INDIAN NATION,  
*Plaintiff,*

vs.

COUNTY OF YAKIMA and DALE A. GRAY,  
Yakima County Treasurer,  
*Defendants.*

\_\_\_\_\_  
AFFIDAVIT OF RAY E. OLNEY  
IN SUPPORT OF SUMMARY JUDGMENT

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF YAKIMA )

RAY E. OLNEY being first duly sworn on oath, deposes and says:

1. That your affiant is a duly elected member of the Tribal Council of the Yakima Indian Nation. That your affiant currently serves as chairman of the taxation committee of the Tribal Council. That your affiant has personal knowledge of the facts stated in this affidavit and is competent to testify as to the same. That your affiant makes this affidavit in support of the Yakima Nation's position that tribal members and the Tribe itself are exempt from ad valorem property taxes with regard to

fee patent land owned within the exterior boundaries of the Yakima Indian Reservation.

2. The Yakima Nation is a sovereign Indian nation retaining the right to govern and make its own laws since the time of entering into the *Treaty With the Yakimas*, 12 Stat. 951.

3. In the 1984 through 1987 fiscal years, in excess of \$5,000,000.00 per fiscal year of tribal income has been expended to fund tribal governmental programs. The vast majority of tribal income is derived from the sale of timber from and the lease of unallotted tribal lands. Tribal governmental programs receiving a portion of the \$5,000,000.00 of tribal income include programs such as:

Law Enforcement

Court System

Public Works (Solid Waste Disposal, Water and Sewer, etc.)

Health Care (Medical Services, Alcohol Rehabilitation, etc.)

Education

Wildlife and Fish Management

Governmental Operations (Zoning, Water Administration, etc.) These governmental services benefit the 7,200 (approximate) enrolled members of the Yakima Nation. No enrolled member of the Yakima Nation may sever his or her tribal relation and remain enrolled. Some of these governmental services, such as law enforcement and waste disposal, also benefit the non-enrolled population of the Yakima Indian Reservation.

4. If the government of the Yakima Nation did not exist, an additional \$700.00 (approximate) per year would be distributed to each enrolled member of the Yakima Nation from tribal income. Stated another way, each enrolled member of the Yakima Nation is charged

approximately \$700.00 per year to fund tribal governmental services. Simple multiplication demonstrates that an average family of four tribal members pay approximately \$2,800.00 per year to fund governmental services.

5. The Yakima Nation has the power and authority to impose a property tax upon the fee patent lands of tribal members. The Yakima Tribal Council has made considerable inquiry and study of possible taxing programs to assist in the funding of tribal government. However, the Tribal Council has not adopted a property taxing scheme as it is the view of the Yakima Nation Tribal Council that its enrolled members are already charged more than a fair share of the costs of funding tribal governmental programs.

6. Your affiant believes that by requiring tribal members and the Yakima Nation to contribute to the costs of state and county government, the state and county is intruding into and infringing upon the integrity of the tribal government. The payment of property taxes by the Yakima Nation itself is nothing more than a direct loss of funds which would otherwise be available to fund tribal governmental programs. The payment of property taxes by enrolled members of the Yakima Nation has the unmistakable effect of removing money from the local Indian economy. This loss of money requires the tribal government to provide services such as health care, public works, and education, to tribal members who may have had an ability to pay for the services privately. In short, the Yakima Nation spends monies for governmental services which it would not otherwise have to when its enrolled members are required to pay taxes to the state and county jurisdictions.

7. Finally, your affiant would point out that enrolled tribal members who pay property taxes are in essence being taxed to fund the costs of two governments. As

pointed out hereinabove, each member of the Yakima Nation contributes approximately \$700.00 per year toward the costs of funding tribal governmental programs. In addition, tribal members who own fee patent land are now required to pay property taxes to Yakima County. Conversely, non-Indian residents of the Yakima Indian Reservation do not contribute in any significant way to the costs of funding the tribal government. Non-Indian property owners pay their property taxes to Yakima County. Your affiant believes this circumstance to be fundamentally unfair in addition to being a violation of the decision of the United States Supreme Court over the last 15 years.

DATED this 8th day of March, 1988.

/s/ Ray E. Olney  
RAY OLNEY

SIGNED AND SWORN to before me this 8th day of March, 1988.

/s/ Joyce Pinkham  
Notary Public in and for the  
state of Washington, residing  
at Wapato Wa.  
My commission expires: 11/3/91

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

\_\_\_\_\_  
No. C87-854-AAM

CONFEDERATED TRIBES AND BANDS  
OF THE YAKIMA INDIAN NATION,  
*Plaintiff,*

vs.

COUNTY OF YAKIMA and DALE GRAY,  
Yakima County Treasurer,  
*Defendants.*

\_\_\_\_\_  
AFFIDAVIT OF R. WAYNE BJUR

STATE OF WASHINGTON    )  
                                  ) ss  
COUNTY OF YAKIMA     )

R. WAYNE BJUR being first duly sworn on oath,  
deposes and says:

1. That your affiant is an attorney for the plaintiff in the above-captioned matter. That your affiant has personal knowledge of the facts stated in this affidavit. That your affiant makes this affidavit for the purpose of identifying the exhibit attached hereto.

2. Attached hereto as Exhibit "A" and by this reference incorporated herein, is an accurate illustration of a map of the area ceded to the United States by the *Treaty with the Yakimas*, 12 Stat. 951. Included within the ceded area as illustrated is the Yakima Indian Reservation which area of land was reserved by said treaty

for the exclusive use and benefit of the Yakima Indian Nation. This illustration of the ceded area is provided to the Court in conjunction with the Court's analysis of 25 U.S.C. Sec. 608(a).

DATED this 4th day of April, 1988.

/s/ R. Wayne Bjur  
R. WAYNE BJUR

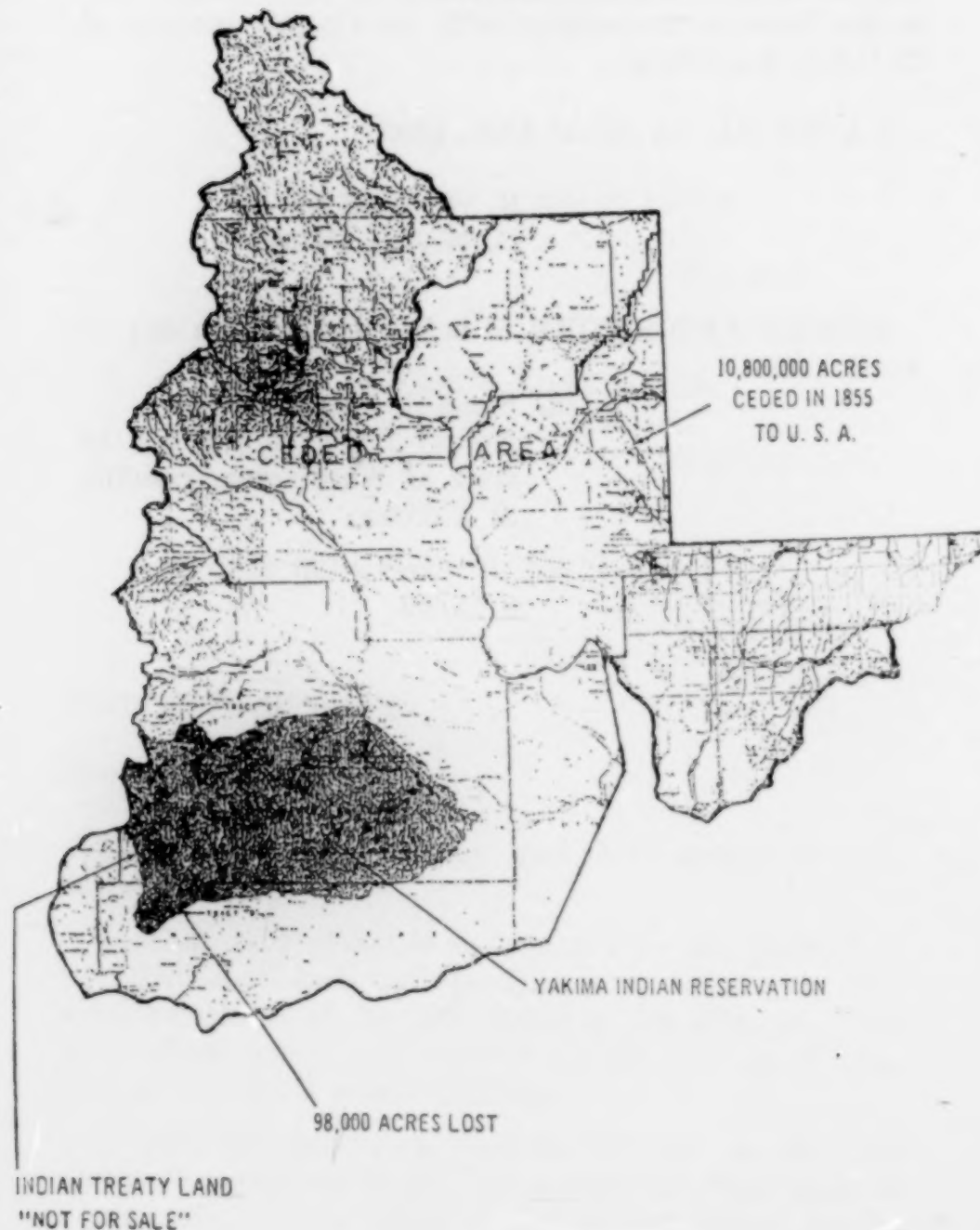
SIGNED AND SWORN to before me this 4th day of April, 1988.

/s/ Sonia R. Noe  
Notary Public in and for the  
state of Washington, residing  
at Yakima.

My commission expires:  
3/15/90



## EXHIBIT A

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

No. C-87-854-AAM

CONFEDERATED TRIBES AND BANDS  
OF THE YAKIMA INDIAN NATION,  
*Plaintiff,*

vs.

COUNTY OF YAKIMA and DALE GRAY,  
Yakima County Treasurer,  
*Defendants.*CROSS-MOTION FOR  
PARTIAL SUMMARY JUDGMENT

Defendants herein, County of Yakima and Yakima County Treasurer, by the undersigned attorney, hereby move this Court for partial summary judgment in this cause. Specifically, Defendants request a judgment from this Court that (1) any and all ad valorem taxes levied and collected by Defendants on Indian-owned lands within the Yakima Indian Reservation are lawful where such lands have previously been conveyed by fee-patent to individual Indians according to the Indian General Allotment Act, and that (2) any real estate excise taxes collected by Defendants on the sale of such lands are lawful where such lands have previously been conveyed by fee-patent to individual Indians according to the Indian General Allotment Act.

This motion is based on FRCP 56 and the record and file herein.

Defendants specifically allege, in support of this motion that there is no genuine issue as to the following material facts:

1. There exist some real properties within the Yakima Indian Reservation which have, in the past, been patented in fee to individual Indians according to the Indian General Allotment Act, 25 USC 331, et seq.

2. Defendants levy and collect ad valorem taxes on these properties.

3. Defendants collect real estate excise taxes on the sale of these lands when they are sold.

DATED this 1st day of April, 1988.

/s/ John V. Staffan  
JOHN V. STAFFAN  
Deputy Prosecuting Attorney  
Attorney for Defendants

JVS1(F)

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

No. C-87-854-AAM

CONFEDERATED TRIBES AND BANDS  
OF THE YAKIMA INDIAN NATION,  
*Plaintiff,*

vs.

COUNTY OF YAKIMA and DALE A. GRAY,  
Yakima County Treasurer,  
*Defendants.*

AFFIDAVIT OF NANCY DAVIDSON  
RE: EXCISE TAX ON SALE OF  
RESERVATION INDIAN LANDS

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF YAKIMA )

I, NANCY DAVIDSON, being first duly sworn on oath, now state:

I am now, and since October, 1985, have been the duly qualified, appointed and acting Assistant Yakima County Treasurer. As such I am familiar with the policies and practices of Yakima County regarding collection of real estate excise taxes under RCW 82.45, and I assist the County Treasurer in seeing that these taxes are collected according to law. This office collects real estate excise taxes on the sale of only those properties listed on Yakima County's tax rolls by the Yakima County

Assessor as taxable, i.e., liable for ad valorem taxation. This office does not collect real estate excise taxes on the sale of any properties the Yakima Indian Reservation which are not listed on the County tax rolls as liable for ad valorem taxes.

/s/ Nancy Davidson  
NANCY DAVIDSON  
Assistant County Treasurer

SUBSCRIBED AND SWORN TO before me this 1st day of April, 1988.

/s/ John Monter  
Notary Public in and for the State  
of Washington, residing at Yakima.  
Expire 11/1/88

JVS1(E)

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

No. C-87-854-AAM

CONFEDERATED TRIBES AND BANDS  
OF THE YAKIMA INDIAN NATION,  
*Plaintiff,*

vs.

COUNTY OF YAKIMA and DALE A. GRAY,  
Yakima County Treasurer,  
*Defendants.*

**AFFIDAVIT OF RALPH HUCK  
RE: TAXATION OF INDIAN LANDS**

STATE OF WASHINGTON    )  
                                  )   SS  
COUNTY OF YAKIMA     )

I, RALPH HUCK, being first duly sworn on oath, now state:

I am the duly qualified, elected and acting Assessor for Yakima County, Washington. I have served in this capacity continuously since January, 1975. For five years prior to 1975, I worked as an appraiser in the office of the Yakima County Assessor. Among the duties of my office, I (with staff assistance) list and value of all taxable properties in Yakima County for purposes of ad valorem taxation.

It is the policy and practice of my office to list on the ad valorem tax rolls no tribal-owned or individual-Indian-



owned properties, except those which have either (1) been the subject of fee-patents as provided for in the Indian Allotment Act, or (2) been divided, through mesne conveyances, inheritance, or otherwise, into fractional tenancies in common between or among Indians and non-Indians. This latter group of properties are taxed only to the extent of the non-Indian fractional interest.

/s/ Ralph Huck  
RALPH HUCK  
Yakima County Assessor

SUBSCRIBED AND SWORN to before me this 1st day of April, 1988.

/s/ John Monter  
Notary Public in and for the State  
of Washington, residing at Yakima.  
expire 11/1/88

JVS1(D)

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

No. C-87-854-AAM.

CONFEDERATED TRIBES AND BANDS  
OF THE YAKIMA INDIAN NATION,  
*Plaintiff,*  
vs.

COUNTY OF YAKIMA and DALE A. GRAY,  
Yakima County Treasurer,  
*Defendants.*

ANSWER OF YAKIMA COUNTY AND  
YAKIMA COUNTY TREASURER TO  
PLAINTIFF'S COMPLAINT

Defendants Yakima County and Yakima County Treasurer, by and through the undersigned attorney, answer the respective allegations in plaintiff's Complaint for Declaratory Judgment and for Injunctive Relief as follows:

I.

Defendants admit the allegations of plaintiff's paragraph I as to status and capacity. Defendants deny, for lack of knowledge, that the persons whose real properties are the subject of this case, are Yakima tribal members residing within the boundaries of the Yakima Reservation. Defendants also deny, for lack of knowledge, that this action is brought "in place of the United States of America".

II.

Defendants admit the allegations made in paragraph II of plaintiff's complaint.

## III.

Defendants admit the allegations made in paragraph III of plaintiff's complaint.

## IV.

Defendants deny the allegations made in paragraph IV of plaintiff's complaint.

## V.

Defendants admit that the United States recognized the Yakima Indian Nation in the Treaty with the Yakimas and that the Treaty reserved certain described lands designated as the Yakima Reservation for the exclusive use and benefit of the Confederated Tribes and Bands of the Yakima Indians. Defendant's deny that the Treaty reserved these lands for the exclusive use and benefit of individual Yakima members. Defendants admit that the Yakima Nation retained some degree of sovereignty and power to self-govern, but defendants assert that the scope of this sovereignty and power to self-govern has been narrowed by Congress since the making of the Treaty. Defendants admit that plaintiff provides governmental services to its members. Defendants deny that plaintiff provides services to non-members. Defendant's deny all other allegations made in Paragraph V of plaintiff's complaint.

## VI.

Defendants admit that the Yakima tribe owns considerable real property within the exterior boundaries of the Yakima Reservation, some of which is trust land and some of which is in unrestricted fee patent status. Defendants deny, for lack of knowledge, that these tribal lands are "owned and operated" under reserved powers of tribal self-government.

## VII.

Defendant Yakima County admits that it levies certain ad valorem taxes on real properties within Yakima County. This is done under authority of RCW 36.40 and 84.52. It is not done by the County Treasurer, as alleged by plaintiff. Defendants admit that the Yakima County Treasurer collects Yakima County's ad valorem real property taxes under authority of RCW 84.56, 84.60 and 84.64, and receives some payments under protest as provided for in RCW 84.68.020.

## VIII.

Defendants admit that Yakima County ad valorem taxes are levied and collected on fee patent lands within the Yakima Reservation, some owned by the Yakima Nation and some by individual members of the Yakima Nation. For lack of knowledge as to the tribal relations of those tribe members whose properties are taxed, defendants deny that these members have not severed tribal relations.

## IX.

Defendants deny each and all of the allegations of paragraph IX of plaintiff's complaint.

## X.

Defendants deny each and all of the allegations of paragraph X of plaintiff's complaint.

## XI.

Defendants deny that the plaintiff and its members will suffer irreparable harm from the planned tax sale, if and when held. Defendants admit the other allegations of paragraph XI of plaintiff's complaint.

## XII.

Defendants deny the allegation of paragraph XII of plaintiff's complaint.

## XIII.

Defendants answer the same as in paragraphs I through VI hereinabove.

## XIV.

Defendants admit the allegation in paragraph XIV of plaintiff's complaint that the excise tax is imposed but deny that the tax is part of the consummation of any sale.

## XV.

Defendants deny each and all of the allegations of the fifteenth numbered paragraph (mis-numbered as the second Paragraph XI) of plaintiff's complaint.

## AFFIRMATIVE ALLEGATION

## XVI.

Further, Defendants affirmatively allege that the taxes challenged herein are authorized by the Indian General Allotment Act, as amended, 25 USC 331, et. seq., and more specifically by 25 USC 349.

## PRAYER

WHEREFORE, defendants respectfully pray the court for judgment:

1. Vacating the Agreed Order Temporarily Restraining Foreclosure Sale herein, dated November 17, 1987, (Court of Record No. 9) ; and
2. Denying all other relief requested by plaintiff; and
3. Declaring the taxes challenged herein to be lawful; and
4. Awarding defendants their costs against plaintiff; and

5. Granting such other relief as is just and lawful.

DATED this 6th day of April, 1988.

/s/ John V. Staffan  
JOHN V. STAFFAN  
Deputy Prosecuting Attorney  
Attorney for Defendants  
Room 329 County Courthouse  
Yakima, WA 98901  
(509) 575-4141

JVS1(B)



IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

\_\_\_\_\_  
No. C-87-654-AAM

CONFEDERATED TRIBES AND BANDS OF THE  
YAKIMA NATION,  
*Plaintiff,*  
vs.

COUNTY OF YAKIMA; and DALE A. GRAY,  
Yakima County Treasurer,  
*Defendants.*

\_\_\_\_\_  
**STIPULATION OF FACTS  
FOR SUMMARY JUDGMENT**

[Filed April 26, 1988]

Pursuant to this Court's order of April 11, 1988 herein, the parties agree to and submit for the Court's consideration the following facts relating to benefits (as between State and County government on one hand and Yakima Indian Nation tribal government on the other hand) and to the pattern of fee land ownership within the Yakima Indian Reservation. The parties attorneys have reviewed each other documentary support for the facts recited herein and find all to be prima facie valid. However, this fact stipulation is only for purposes of the pending cross-motions for summary judgment, as in such cases the facts as presented by non-moving parties are presumed to be true. In the event of a trial of this cause, the parties reserve the right to challenge and require proof of these facts according to applicable discovery and evidence rules.

**LANDS, POPULATION AND OWNERSHIP**

1. The Yakima Indian Reservation consists of approximately one million, three hundred thousand acres of land, located almost entirely in Yakima County.

2. The Yakima Indian Nation owns some interest in approximately seventy-five parcels of fee-patented land within the Yakima Indian Reservation. Most of these interests are fractional. The total assessed value of the partially tribal owned lands is five million, four hundred four thousand, nine hundred sixty dollars (\$5,404,960). The total assessed value of the Yakima Tribe's interest in these lands is one million, two hundred fifty two thousand, seven hundred twenty six dollars (\$1,252,726). The sum of ten thousand, seven hundred eighteen dollars and seventy five cents (\$10,718.75) in state and local ad valorem taxes was levied by defendant Yakima County against the Yakima Nations share of these lands for the year 1987.

3. The Yakima Indian Nation has 7,604 enrolled members. Approximately 4,500 of these members reside within the boundaries of the Yakim Reservation. Approximately 104 individual members of the Yakima Nation are known to own a total of 139 parcels of fee-patented land within the Yakima Indian Reservation. Of these 139 parcels, 72 are residential lots whose acreages are not known to the parties. Of these residential lots, 33 are in Toppenish, 17 in Wapato, 14 in White Swan. The remaining 67 parcels comprise a total of 1,335.68 acres, and their total assessed value is \$4,580,420. The parties believe most of the individual Yakima Indian owned parcels within the Yakima Reservation have been identified and will jointly advise the Court of others, when identified, if requested by the Court.

4. A map of the Yakima Indian Reservation is submitted herewith to illustrate the locations of the fee-patented lands referred to herein. This map is marked

in blue to indicate the individual Indian owned parcels hereinabove mentioned, in red to indicate those lands above mentioned in which the Yakima Tribe has interests, and the other fee-patented lands within [sic] the Reservation are colored in grey.

5. According to the most recent (1980) U.S. Census data, the total population of the Yakima Indian Reservation is 25,363. 24,720 of these are from the Yakima County portion of the Reservation and 643 from the Klickitat County portion. The same 1980 Census showed 4,983 Indian inhabitants of the Yakima Reservation, without regard to tribal affiliation, 4,919 of whom are from the Yakima County portion of the Reservation and 64 from the Kittitas County portion.

#### LAW ENFORCEMENT

6. The Yakima Indian Nation expended approximately \$625,000 in 1987 providing law enforcement service within the exterior boundaries of the Yakim Indian Reservation. Tribal Police officers work approximately fifty (50) eight-hour shifts per week patrolling the open area of the Reservation. Approximately 20% of arrests and traffic citation by Tribal Police involve non-members of the Yakima Indian Nation. Approximately 11% of other Tribal Police patrol contacts are for the assistance of other law enforcement agencies. There are other Tribal Police contacts with non-members, but the number and volume of these is not known. All Tribal officers are cross-deputized by the Yakima County Sheriff, and all Yakima County Sheriff's officers are cross-deputized by the Yakima Tribal Police. Yakima Tribal officers enforce state as well as Tribal laws and are eligible for training at the Washington State Police Training Academy at no charge to the Yakima Tribal Police or Yakima Indian Nation.

7. The Yakima County Sheriff's Department expended approximately \$779,441 in 1987 providing law enforce-

ment service to the area included within the exterior boundaries of the Yakima Indian Reservation. Yakima County Sheriff's deputies work approximately thirty-one eight-hour shifts per week, patrolling within the Yakima Reservation.

8. In 1987, Yakima County expended \$3,253,252 to operate and maintain the Yakima County Jail, \$1,178,026 to operate the office of the Yakima County Prosecutor, and \$399,506 to provide public defender services in Yakima County courts. Of 112,617 prisoner days served in the Yakima County Jail in 1987, 10,082 days (or 8.95%) were served by Indians, without regard to tribal affiliation.

#### LAND USE REGULATION

9. Land use regulation by the Yakima Indian Nation prior to October 1987, was minimal. However, the Yakima Indian Nation has budgeted \$50,000 for land use regulation (of both trust and fee lands) within the Yakima Reservation, for the fiscal year ending October, 1988. Approximately two-thirds of the recent land use applications of the Yakima Indian Nation have been from non-members of the Yakima Nation and related to fee lands.

10. Through calendar year 1987, Yakima County has regulated land use of fee patented lands within the Yakima Indian Reservation. Authority for this regulation is the subject of other pending litigation. 6.4% of the cases worked by the Yakima County Planning Department from 1983 through 1987 involved regulation of fee lands within the Yakima Indian Reservation. The total expenditure of the Yakima County Planning Department for land use regulation in the year 1987 was \$355,994.

#### PUBLIC WORKS

11. Yakima County owns and maintains 1,770 miles of roads, 490 miles of which are within the Yakima In-



dian Reservation. In 1987, the Yakima County Public Works Department expended \$5,017,162 on maintenance of County roads, including \$1,031,674 on the 490 miles of County roads within the Yakima Indian Reservation. In 1987, Yakima County Public Works also expended \$3,755,368 on County road construction, including \$586,253 on road construction within the Yakima Indian Reservation.

12. The unincorporated area within the Yakima Indian Reservation is served by Eastman Disposal Service, a private refuse hauler which contracts with individual occupants and owners for this service. The solid waste disposal customers of Eastmont Disposal include both members and non-members of the Yakima Indian Nation. The Yakima Indian Nation paid \$13,904 to Eastmont Disposal Service in the past fiscal year, to subsidize the collection of solid waste by Eastmont.

#### MISCELLANEOUS SERVICES

13. Yakima County provides other services to Yakima's County residents, including residents of the Yakima Reservation and members of the Yakima Nation, without fees or charges. Among these are the conduct of public elections in which members of the Yakima Indian Nation participate, and recording of Yakima Tribal marriages.

14. The Yakima Nation administers various programs to Indians without regard to tribal affiliation. These include detox center, food commodity distribution, health care services.

#### SCHOOLS

15. There are five public school districts all or significant portion of which are located within the boundaries of the Yakima Reservation and which had Indian students enrolled in the 1986-87 school year. These are the Mt. Adams, Union Gap, Wapato, Toppenish and Granger districts.

16. The Mt. Adams School District received \$4,085,444 in state and local funds for the 1986-87 school year. 828 students were enrolled that year in the Mt. Adams District, of whom 281 were Indians. The Mt. Adams District also received, under PL 81-874, for the 1986-87 school year, \$871,102 in funds from the United States attributable to (1) students (both Indian and non-Indian) residing on Yakima Reservation trust lands and (2) students whose parents were employed by the Yakima Indian Agency.

17. The Union Gap School District received \$1,641,912 in state and local funds for the 1986-87 school year. 432 students were enrolled in the Union Gap District, of whom 23 were Indians. The Union Gap District also received, under PL 81-874, for the 1986-87 school year, \$2,859 in funds from the United States attributable to (1) students (both Indian and non-Indian) residing on Yakima Reservation trust lands and (2) students whose parents were employed by the Yakima Indian Agency.

18. The Wapato School District received \$7,868,444 in state and local funds for the 1986-87 school year. 2,578 students were enrolled that year in the Wapato School District, of whom 733 were Indians. The Wapato School District also received, under PL 81-874, for the 1986-87 school year, \$1,232,205 in funds from the United States attributable to (1) students (both Indian and non-Indian) residing on Yakima Reservation trust lands and (2) students whose parents were employed by the Yakima Indian Agency.

19. The Toppenish School District received \$7,675,273 in state and local funds for the 1986-87 school year. 2,515 students were enrolled that year in the Toppenish School District, of whom 418 were Indians. The Toppenish School District also received, under PL 81-874, for the 1986-87 school year, \$705,204 in funds from the United States attributable to (1) students (both In-



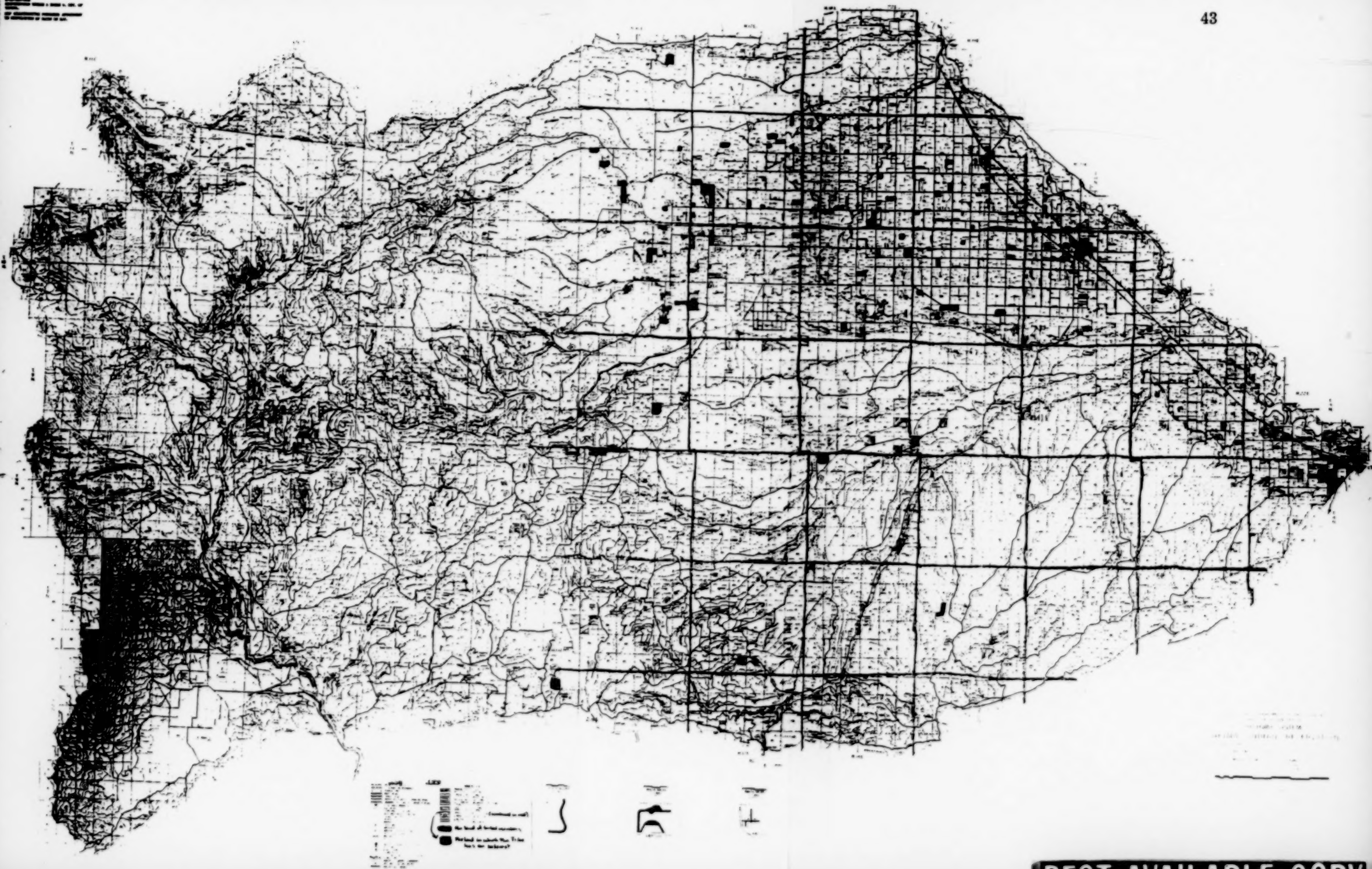
dian and non-Indian) residing on Yakima Reservation trust lands and (2) students whose parents were employed by the Yakima Indian Agency.

20. The Granger School District received \$3,050,075 in state and local funds for the 1986-87 school year. 886 students were enrolled that year in the Granger School District, of whom 81 were Indians. The Granger School District also received, under PL 81-874, for the 1986-87 school year, \$238,706 in funds from the United States attributable to (1) students (both Indian and non-Indian) residing on Yakima Reservation trust lands and (2) students whose parents were employed by the Yakima Indian Agency.

DATED this 25 day of April, 1988.

/s/ John V. Staffan  
JOHN V. STAFFAN  
Attorneys for Defendants  
Yakima County Courthouse #329  
Yakima, WA 98901  
(509) 575 4141

/s/ R. Wayne Bjur  
R. WAYNE BJUR  
Attorney for Plaintiff  
316 No. 3rd Street  
P.O. Box 487  
Yakima, Wa 98901  
(509) 575-1500



IN THE SUPREME COURT  
OF THE UNITED STATES

---

The petitions for writs of certiorari are granted. The cases are consolidated and a total of one hour is allotted for oral argument.